

California Department of Transportation

Native American Advisory Committee

Quarterly Meeting Minutes

September 18, 2001

Joan Sollenberger, Chief, Division of Transportation Planning, called the meeting to order at 9:15 a.m.

Opening Prayer: Committee member Everett Freeman opened the meeting with prayer.

Roll Call: Betty Miller called Roll. Committee members in attendance were Samuel Elizondo, Everett Freeman, Joseph Garcia, Sr., Joseph Myers, Lorenda Sanchez, Ted Sanchez, Garth (Randy) Sunberg, Jr., and Kathy Wallace. Committee Alternate member in attendance was Mary Camp for Dore Bietz.

Question of Quorum: Joseph Myers asked if there was a quorum requirement in order to conduct business. Cynthia Gomez, Chief, Native American Liaison Branch, indicated that the Committee's Charter does not require a quorum. Mr. Myers stated that the Committee should address such a requirement.

Adopt Agenda: Karen Nissen, Native American Liaison, Central California Region, requested that an update of the TERO Consortium funding be added to the Agenda. Olivia Fonseca, Assistant Deputy Director, Office of Civil Rights, was in attendance and indicated that she could provide an update. The Committee added Civil Rights to New Business so she could address this issue. The Agenda was approved. Motion by Randy Sunberg; Seconded by Joseph Myers. Vote was 9 For, 0 Against, 0 Abstain.

Approve Minutes: The Committee approved the Minutes of the May 1, 2001, meeting, with corrections to typographical errors and reference to Scientific Advisory Board to Giant Sequoia Monument. Motion by Randy Sunberg; Second by Joseph Myers. Vote was 9 For, 0 Against, 0 Abstain.

Welcome/Introductions: Joan Sollenberger welcomed all in attendance.

OLD BUSINESS:

1. **Negotiated Rule Making Update.** Joey Silvas, BIA, Northern California Agency, Roads, reported that the BIA was expecting publication of the funding formula for Indian Reservation Roads (IRR) program funds in the Federal Register by December, 2001. Following publication, Mr. Silvas said that the BIA Agency offices would work with Tribes to complete requests for Planning funds. The Pacific Region office has indicated that conflicts are still going on between small and large Tribes over the formulas being considered.

Mr. Silvas stressed that it is important for California Tribes to communicate with the U.S. Congress about the need of small Tribes for a formula that is fair to them. Kanu Patel, BIA, Pacific Region, Roads Engineer, has been writing letters to Federal offices, pointing out the needs of small Tribes through his reports of outstanding maintenance requirements and delays. Cynthia Gomez reminded everyone that Director Morales had sent a letter in April of this year to Sharon Blackwell, former Assistant Secretary – Indian Affairs, Department of the Interior, in support of the “Small Tribes Formula.”

Everett Freeman remarked that there are not enough California Tribes making their needs known to the people in control of formulas and funding, and those people don’t understand how difficult it is in California with rights-of-way, land availability and road miles. In addition, help is lacking from organizations such as the National Congress of American Indians (NCAI) and the Inter-Tribal Transportation Association (ITTA) because their membership is largely that of big Tribes and they do not support small Tribes’ needs.

In responding to a question from Joseph Garcia, Sr., Mr. Silvas indicated that California would receive approximately \$3.5 million more if the Small Tribes Formula were to be adopted. He said the BIA is doing what it can to bring in more funding by upgrading its construction reporting procedures---plugging in inventory, design and road miles requirements. He emphasized, again, the necessity for small Tribes to contact their Federal representatives.

Joan Sollenberger asked if any of the Tribes in attendance at the meeting had written to Congress. None had. She encouraged Tribes to send letters to Congress in support of the formula that would best meet their needs.

Joseph Myers mentioned that the new Assistant Secretary comes from Oklahoma and may be more aware than Sharon Blackwell was to small Tribes needs. In response to Mr. Myers’ observation that small Tribes don’t get any funds for individual projects, Joey Silvas said that was true. They work with the BIA to establish a priority list for road projects that are administered by the BIA.

2. Acquisition and Leasing Procedures for Tribal Procurement Update. Mr. Rick Sheasley, Acting Chief, Division of Equipment, California Department of Transportation, addressed the meeting. He indicated that response from Tribes was good to the Native American Liaison Branch letter of July 12th, describing the procedure for the sale of surplus State mobile equipment. The Division had received approximately twenty-five (25) inquiries and a few sales had taken place. Overall, the process is going well. Mr. Sheasley informed everyone that the Division only prints a list of available equipment prior to a public sale or auction. At a request from Kathleen Sartorius, Native American Liaison, Northern California Region, he said that they would attempt to confirm receipt of a request for equipment from the Tribes.

Responding to a question from Everett Freeman, Mr. Sheasley confirmed that other governmental agencies could lease/rent from the Department. Mr. Freeman indicated that the BIA in California needs equipment for road maintenance at various stations throughout the State, instead of hauling the equipment from Sacramento to these areas. Excess equipment can be rented on a seasonal basis. Surplus equipment can be rented for between what the value is today and what it is when turned in. He suggested that a letter be sent to Tribes informing them that they can rent or lease equipment from the Department, as well as purchase surplus equipment.

In responding to a comment about the use of the equipment once it is sold, Mr. Sheasley replied that the Department doesn't care about the use. Cynthia Gomez pointed out that the Department prohibits purchasing equipment and reselling it for profit.

Cynthia Gomez reported that the Reservation Transportation Authority (RTA) had encountered some problems when changing ownership of the equipment. Anyone wishing to purchase equipment from the Department may wish to talk to RTA to avoid any problems.

3. California Indian Policy Statement Update. Sharon Scherzinger, Chief, Office of Regional and Interagency Planning, announced that the Director's Policy No. 19, "Working with Native American Communities," had been signed by the Director on August 29th. She expressed her appreciation to the Committee for its help in working with the Department to accomplish this goal. Significant aspects of the Policy are the acknowledgement of a Government-to-Government relationship, avoidance of adverse impacts to cultural and other resources, recognition of important Native American rights, site, traditions and practices; and, consulting with Tribal Governments prior to taking actions that impact their communities.

Joan Sollenberger informed everyone that she had sent a Memorandum to all Department Districts explaining that Tribes should be included in planning that impacts them from the beginning. She said that the next step in direction to the Districts would be more specific guidance in how to accomplish the Director's Policy, and she welcomed input from the Indian community.

All California Tribes will receive a copy of the Policy, and the Director's office is working to reschedule a presentation and photo opportunity with the executive officers of the Committee that had to be postponed due to activities resulting from the attack back east. Ron Barr, Bishop Paiute Tribe, asked if under the Policy's definition of "consultation" all policies will be given review and input by Tribes. Ms. Sollenberger responded in the affirmative if those policies will affect Tribal Governments.

4. Interagency Planning Group (IPG) Summary, Transferring Funding Among FHWA, BIA and Caltrans. Cynthia Gomez reported that Wade Hobbs, Urban Transportation Planner, FHWA, had previously indicated that one of the ways to get the Tribes' concerns heard was to participate in IPG meetings. The Native American Liaison Branch participated in some of these meetings. Some Tribes are able to work with the Regional Transportation Planning Agencies (RTPAs). Tule Indian Reservation is participating in projects with the Tulare County Association of Governments (TCAG). Santa Rosa Rancheria is working with District 6 and Kings County Association of Governments (KCAG). The San Diego Association of Governments (SANDAG) has contacted the RTA and sent out their transportation plan to Tribes in San Diego, in an effort to address Tribal concerns.

Cynthia Gomez reviewed efforts by the Department to enable it to contract with Tribes, the position of Legal being that it cannot now do so. Ms. Gomez reported that the State legislature had passed AB 1564, which would give the Department authority to contract with Tribes, but the Governor has not signed it. The Governor has until October 15 to veto or sign the bill. Cynthia is working with the Department's Finance Department, FHWA and BIA to possibly

develop a Master Agreement between the Department and the BIA. A meeting is scheduled for October 10, 2001, to discuss this possible option.

5. Highway Vegetation Subcommittee. Kathy Wallace reported that the Subcommittee met on September 17th. She provided the draft Minutes of the meeting to the Committee. A copy of the Minutes is attached. Ms. Wallace indicated that more volunteers are needed for the next meeting, which will be held the day before the next Advisory Committee meeting. Cynthia Gomez mentioned that Randy Ferguson, who previously provided a list of native plants to the Advisory Committee, might work with the Subcommittee. Ms. Gomez recommended that Tribal members be included on the Subcommittee.

Doug Sibley, Chief, Regional Planning Branch, District 4, indicated the willingness on the part of District 4 to host a meeting in the Bay Area if it would benefit the Subcommittee's work.

Mary Camp, Tuolumne Rancheria, asked if the Subcommittee was working with Tribally operated nurseries. Joan Sollenberger said that the Department could make use of a list of native nurseries.

Ron Barr, Bishop Paiute Tribe, wanted to know how the NAAC regarded letting the public know about sensitive areas---plants, artifacts---following an announcement that one of the options being considered by the Subcommittee was installing roadside rest stop signs identifying vegetation. Ron was very opposed to the concept of installing signs that would identify the location of the native plants because it could provide more opportunity for the general public to damage these areas. Joan Sollenberger said that the Department should not jeopardize any sensitive areas. Kathy Wallace indicated that it would be the Subcommittee's job to get the Department and locally impacted people together.

Joey Silvas mentioned that Tribes need to be consulted in whatever decisions are reached by the Department. Joan Sollenberger at that time reviewed the role of the Subcommittee and how its function is to recommend options/actions to the NAAC, which will decide what recommendations may be made to the Department. Ron Barr added that Tribes have to be vigilant and express their positions regarding any decisions impacting their native landscaping. Joan Sollenberger directed the Subcommittee to keep Cynthia Gomez updated on its work and aware of its meetings.

Martin Martinez, Redwood Valley Reservation, shared with the group that a few years ago when the Tribe wanted to begin basketweaving classes, it could not find the plants needed. The Tribe developed its own basketry garden, which now includes a greenhouse. Members are now learning how to make baskets. Upon learning that they have produced a video on the subject, Joan Sollenberger suggested that Martin might want to share it with the NAAC. He agreed that he could do that, and it will be placed on the next meeting Agenda.

Joseph Myers thought that the Department should be able to discontinue destroying plants by pesticide immediately and that Tribes shouldn't have to confront local Department maintenance organizations. The Federal Natural Conservancy Agency in Davis will work with private property owners on behalf of local Tribes to access cultural resources. Joan Sollenberger stated that it is the policy of the Department to reduce or eliminate pesticides use, and the

Department needs to know the particular areas of concern to the Tribes. Karen Nissen stated that each District should have a landscaping committee, and that a list of plants should be prepared so that maintenance crews can avoid destroying those plant resources. Cynthia Gomez suggested that an effort could be made to get the Department and local Tribes together. Kathleen Sartorius reported that the Department does not spray in much of District 1 and that two (2)-lane roads are not being sprayed at all. Joan Sollenberger stated the need for a follow up meeting among her, Cynthia Gomez and Cassandra Hensher, Subcommittee member.

6. Environmental Subcommittee Report: Cynthia Gomez reported that the Subcommittee had met on July 2nd and August 14th. Copies of the minutes of the meeting were distributed. During the July 2nd meeting, those in attendance discovered that they needed to learn more about the Department organization and project development in order to address all the issues fully. The August 14th meeting was devoted to Department presentations on organization and project delivery. Cynthia thanked Irenia Quitiquit for the list of Tribes interested in working with the Subcommittee. She reiterated that the objective of the Subcommittee is to help the Tribes and the Department resolve environmental and cultural resources issues.

7. Transportation Guide for Native Americans (Handbook): Cynthia Gomez reported that the initial publication of the Handbook was distributed at the Tribal Transportation Academy in Ukiah August 21 – 23 and used as a training tool in the Academy. Evaluations of the Handbook had been requested and received from the Tribal participants. Following the Academy evaluations and Division of Transportation Planning review, the Handbook was revised and distributed to the Committee members in their meeting packets. Cynthia requested feedback from the members by October 9th. Following comments from the Committee, the Handbook will be revised as required and then given general distribution.

8. Tribal Transportation Academy: Cynthia Gomez reported that a summary of the Academy evaluations and follow up items had been distributed to the Committee and all in attendance. Overall, the evaluations were positive for the Department. Martin Martinez stated that the Tribes appreciated the training, but could benefit from clarification of charts and where the Tribes fit in and at what steps, how the process works, and what happens when a Tribe doesn't do what it is supposed to do. He suggested that a chart more clearly set forth in stages would be much easier to understand. Cynthia responded that the Department would try to clarify planning and programming descriptions/charts for future academies.

Mr. Martinez said that there is a need for Department personnel to contact the correct Tribal people to discuss business. He, also, expressed the position that Tribes believed it was a good thing that the Department people at the Academy witnessed the behavior of the RTPA representatives as they got a taste of what the Tribes deal with from these local agencies all the time. The door is beginning to open, however, and that is good. The Tribal representatives appreciated the help of the Department personnel at the Academy. Cynthia Gomez announced that the Native American Liaison Branch will be developing training for Department personnel, and Joan Sollenberger indicated that the Department would try to make recommended improvements.

Mary Camp, in noting that the Department had experienced frequently changing staff, including three (3) new Directors, commented that the Department needs a process in place to

contact Tribes when changes take place. The question was asked about how the Department notifies other agencies of changes in organization and personnel.

Ron Barr asked if future Tribal Transportation Academies would be the same as that provided in Ukiah. Cynthia Gomez responded that it would be, as much as possible.

Joeshp Myers asked how many Tribal representatives had attended. Betty Miller did not have the exact count, but Cynthia Gomez estimated 25 to 30 had attended the Academy.

NEW BUSINESS:

1. Nominations for 2002 Advisory Committee and Clarification of Charter.

Cynthia Gomez stated that nominations for vacancies on the Committee, effective January 1, 2002, would be requested from the Tribes, probably within two (2) weeks. In response to questions regarding the composition of the Committee, Cynthia reviewed that the membership cannot exceed eighteen (18), that nine (9) memberships will expire by the end of the year, and that no more than six (6) of the memberships can be from organizations.

2. Reauthorization Act. Cynthia Gomez reported that Federal Lands Highway (FLH) has been holding focus groups around the country regarding the reauthorization of TEA-21. The focus group meeting that was held in Southern California did not have any Tribes in attendance. Mary Camp thought that she would be able to meet representative from FLH at the Committee meeting, but the individual scheduled to attend the meeting had to cancel the trip.

Wade Hobbs acknowledged that notice was not given in a timely manner and that the focus meetings were short, with only general information on all FLH programs. Mr. Hobbs encouraged Tribes to submit comments even at this late date.

Joan Sollenberger requested copies of any Tribal correspondence to FHWA on the reauthorization if the Tribes were comfortable with doing that. She emphasized the value of all of California's transportation agencies submitting input to authorization as a State and not individually in order to have a greater chance to meet our transportation needs. Ms. Sollenberger recommended that reauthorization remain a standard Agenda item until it has been passed.

Mary Camp submitted four (4) areas of concern to the Tuolumne Rancheria regarding the reauthorization: A. Most of the FLH program funds are already appropriated before a request from Tribes is submitted; B. We need to be careful about the scale of projects in California and be able to address smaller projects; C. Cooperative applications and agreements should be developed between Tribes and Federal agencies such as Forestry and Bureau of Land Management; and D. Need the definition of "Tribal land" changed to include all Tribally-owned land, whether it be trust or non-trust status.

Cynthia Gomez noted that the Handbook discussed a number of Tribal issues and that a number of them could possibly be addressed in the reauthorization. Joey Silvas reported that the BIA had submitted three (3) items to FLH: A. Eliminate obligation authority in the IRR program; B. Bridge construction and maintenance should be removed from the roads program (bridge need

does not generate funds, but funding for bridges is taken from the roads funds, which is based on road miles); and, C. Tribes should be able to apply for Highway Trust Fund discretionary funds directly. In response to a question from Everett Freeman, Mr. Silvas indicated that the average cost to construct a mile of road is 1 million dollars.

The Committee approved the recommendation by Joseph Myers that it prepare a statement, within the context of the Charter, of the major issues in California as they apply to the reauthorization of TEA-21, and distribute the statement to all California Tribes, the Department and the Federal Highway Administration. Motion: Joseph Myers; Second: Lorenda Sanchez. Vote 9 For, 0 Against, 0 Abstain. Cynthia Gomez will draft the statement, and Mr. Myers will work with her on it.

3. TERO Consortium Funding. Karen Nissen requested an accounting of TERO training funds appropriated to the Office of Civil Rights in 1999. Olivia Fonseca, Assistant Deputy Director, Office of Civil Rights, reported that TERO training had been provided throughout the State, including in Lake County. A letter will be sent to Bob McKay, President, American Indian State Employees of California (AISEC) to that effect, as this question was raised during the AISEC Transportation Conference in Jackson earlier in the year.

CALTRANS REPORTS:

Tina Biorn, Environmental Coordinator, HQ: Ms. Biorn distributed a copy of a Native American Graves Protection and Repatriation Act status report identifying efforts the Department has made to comply with the law. She reported that District 10 Maintenance is conducting a key Roadside Inventory Survey of cultural resources. Once the survey is complete, the District will identify the resources and meet with Tribes. California Native American Graves Protection and Repatriation legislation is pending. The legislation was passed by the Assembly and Senate and is awaiting the Governor's signature. *Update/correction approved by 01/29/02 Committee: Governor signed above-mentioned pending legislation.* Responding to a question from Joseph Myers, Ms. Biorn indicated that Tribes do not *currently* have the resources to serve as repositories, *but the Department can curate with them if/when they have a repository that meets certain criteria.*

Mario Orso, Native American Liaison, District 11: Mr. Orso introduced himself as the newly-hired Liaison for District 11 and reported that he has been working on local issues and trying to make contact with the Tribes in the District.

Karen Nissen, Central Region Liaison. Ms. Nissen reported that a mural being painted by Fresno High School students for display on Highway 99 as part of a Highway Art Mural program would be completed this fall. Following implementation of the Native American Graves Protection and Repatriation Act (NAGPRA), many sacred items have been found to be contaminated. Ms. Nissan distributed copies of a notice of applications now available for Harvard's Tribal Governance Awards Program.

Alex Morales, Native American Liaison, TERO, Civil Rights, HQ. Mr. Morales reported that he is coordinating future TERO workshops. The next one will be held near the end of October. Mr. Morales is working with Mario Orso, District 11, to find a location for training.

Doug Sibley, Native American Liaison, District 4. Mr. Sibley introduced Emmanuel Mekwunye as the new Native American Liaison for District 4 and announced that a planning rant workshop will be conducted in Oakland on Monday, September 24th. Mr. Sibley reported that a grant package had been sent to all Tribes. Workshops would be conducted in Marysville at 1:00 p.m. on September 25th, Southern California Association of Governments at 1:00 p.m. on October 2nd, and the Department office at Manchester Mall at 1:00 p.m. on October 4th. \$8.5 million is available in grant money for partnership planning, transit, community planning and environmental justice. Tribes are encouraged to work through local agencies. The deadline is November 16, 2001.

ANNOUNCEMENTS/OPEN FORUM:

Joan Sollenberger conferred with the Committee to set the next meeting date. December 4, 2001 and January 29, 2002, were suggested as possible dates. Betty Miller will coordinate availability of facilities and the Committee members for those dates.

ADJOURNMENT:

Kathy Wallace moved to adjourn the meeting. Joseph Myers seconded the motion. Vote was 9 For, 0 Against, 0 Abstain. Joan Sollenberger adjourned the meeting at 3:10 p.m.

Submitted by: Betty Miller
Native American Liaison Branch